

03.02.2021
Court No. 19
Item No.17
CP

C.O. 744 of 2020

Laxmi Narayan Bagdi
vs.
Jaharlal Bagdi & ors.

(via video conference)

Mr. Partha Pratim Roy
Mr. Sarbananda Sanyal

....for the petitioner.

None appears on behalf of the opposite parties.

Two attempts were made by the petitioner to serve upon the opposite parties. Both the affidavits of service were filed before this court but none appeared on behalf of the opposite parties.

On the last occasion, i.e. on January 11, 2021, the petitioner was directed to serve the learned advocate appearing on behalf of the opposite parties in the learned court below. Today an affidavit of service has been filed showing service upon the learned advocate Mr. Santanu Pal who appeared on behalf of the opposite parties in the learned court below.

This revisional application has been filed by the defendant in Title Suit No. 126 of 2019 pending before the learned Civil Judge (Junior Division), 1st Court, Kandi, Murshidabad.

The petitioner is aggrieved by the order dated November 20, 2019, by which the learned court

below rejected the application seeking permission to make construction on the suit property. The ground for rejection was that the petitioner was in adverse possession and the status quo order was operating in respect of the suit property.

The grounds for filing an application for construction on the suit property was that the petitioner being a Patta holder received grant under the Griha Nirman Scheme. Unless the petitioner was allowed to construct the dwelling house out of the grant received (instalment), the grant would go back to the Government. Moreover if the petitioner was not allowed to commence the work within the time fixed under the Scheme, the money would go back and ultimately if the suit failed, the irreparable loss and injury suffered could not be compensated in terms of money. The petitioner gave an undertaking before the learned court below that if the plaintiff was successful in the suit, then the petitioner would demolish the structure at his own cost.

The learned court below rejected the prayer of petitioner to allow him to construct on the suit property on the ground that the petitioner was in adverse possession which could not be used as a 'sword' and a status quo order was already subsisting. So the prayer of the petitioner could not be allowed.

The petitioner was asked to file a supplementary affidavit by this court to put on record documents in support of his contentions. The petitioner has filed documents showing the disbursement of the first instalment received through the bank under the Scheme. The record of rights showing that the petitioner was in possession, a survey map, the beneficiary list of the Scheme, the pass book showing disbursement of the first instalment for construction of the dwelling house and a letter issued by the Executive Assistant of the Jajan Gram Panchayat have all been annexed. The petitioner has been given a limited period to start with the construction by the Gram Panchayat.

The opposite parties are trying to frustrate this application by not appearing before this court. Three chances have been given but they have not appeared. On the other hand, delay will cause irreparable loss and injury to the petitioner as already discussed hereinabove.

Under such circumstances, the revisional application is taken up for consideration. The order impugned is without any reasons. The documents relied upon by the petitioner were not before the learned court below. Thus the order impugned is set aside. The petitioner is granted leave to file an application afresh with better particulars along with the documents in support of his contentions. He

shall be given a chance to lead oral and documentary evidence if the learned court deems necessary. The learned court may summon such other person or authority to depose with regard to the correctness of the contention of the petitioner. The opposite party will be allowed to file a written objection and also lead evidence. The said application should be disposed of within 2 months from date of filing of the same on its own merits independently. If the application is allowed, the learned court shall appoint a survey passed commissioner to supervise such construction at the cost of the petitioner. No construction will be allowed unless all sanctions and permissions have been obtained under the law. The petitioner shall not claim any equity in respect of the said construction. The construction shall be at the own risk of the petitioner and shall abide by the result of the suit. If it is found that the petitioner has failed to prove his title and ownership at the final disposal of the suit, he will be bound to demolish the said construction at his own cost and hand over the vacant possession to the plaintiff. The petitioner will also be restrained from alienating the property.

With the above observation the revisional application is disposed of. There shall be no order as to costs. This court has not considered the merits of the application filed by the petitioner. The order impugned is set aside for non-recording of reasons

and because the materials produced before this Court need a re-consideration.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)